

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

Case No. **06-C-0857**
(Consolidated Case 07-C-962)

v.

CERTAIN REAL PROPERTY

Commonly known as
E525 River Road
Luxemburg, Wisconsin,

Defendants.

ORDER

On August 9, 2006, Plaintiff, United States of America, filed this forfeiture action against the defendant real estate alleging that it was used or intended to be used to commit or facilitate the commission of a violation of Title II of the Controlled Substances Act, 21 U.S.C. § 801, *et seq.* Claimant Keith Miller, the owner of the property, was charged in state court with various crimes arising out of a large marijuana grow operation he was allegedly conducting on the property. Interested party State Farm Bank, FSB held the mortgage on the property which, shortly thereafter, went into default.

On December 18, 2006, this case was stayed pending disposition of the state court criminal action against Mr. Miller. On September 26, 2007, State Farm Bank filed an answer to the complaint and a claim for foreclosure on its mortgage on the ground that Miller had defaulted on the underlying note. The stay was in effect lifted, and the United States subsequently filed a motion to dismiss State Farm's claim. The parties entered into a stipulation resolving the motion, and an order for interlocutory sale of the defendant property by the Government was entered on March 18,

2008 based on their stipulation. The Court was advised in May of 2008 that the parties had agreed on an offering price for the property and the United States Marshal's Service was to directly solicit and accept offers to purchase the property before obtaining the services of a licensed real estate broker. No further action having been reported to the Court, a status conference was scheduled for January 30, 2009. Counsel for both Miller and State Farm Bank appeared by telephone at the conference, but no appearance was made by the Government. Efforts to contact the attorney responsible and the attorney she indicated would be substituting for her were unsuccessful.

Based upon the foregoing, the Court advised the appearing parties that it would reschedule the hearing and issue an order directing counsel for the Government to appear in person and show cause why the case should not be dismissed pursuant to Fed. R. Civ. P. 16(f) for failure to appear. Before the order was issued, the Assistant United States Attorney ("AUSA") who had agreed to handle the hearing for the assigned AUSA provided the Court and counsel with a letter of apology explaining what had occurred. Based upon the letter of explanation and counsel's otherwise spotless record before this Court, no order to show cause is required. The Clerk is directed to set this matter for another status conference within the next ten days. Counsel for the government should be prepared to provide the Court and counsel for State Farm Bank with some reasonable deadline by which the property will be sold or explain why State Farm should not be granted judgment of foreclosure and given lease to sell the property on its own.

SO ORDERED this 30th day of January, 2009.

BY THE COURT

s/ William C. Griesbach
William C. Griesbach
U.S. District Judge